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of the appellee to resort to any remedy to which he may be entitled for the collection of his judgment against Anna Kiser, or to any right that A. J. Kiser may have against the Clinchfield Coal Company with respect to unpaid installments of purchase money on the land sold by him to that company.

Reversed.

WESTERN UNION TELEGRAPH CO. v. DAVIS.

Sept. 9, 1912.

[75 S. E. 766.]

1. Telegraphs and Telephones (§ 78*)—Delivery of Message—Penalty—Statutes.—Code 1904, § 1294-h (6), which prescribes a penalty for delay in delivering a telegram, cannot be given extraterritorial force by agreement of the parties to a contract for transmission of a telegram.

[Ed. Note.—For other cases, see *Telegraphs and Telephones*, Cent. Dig. §§ 79-81; Dec. Dig. § 78.*]

2. Telegraphs and Telephones (§ 78*)—Delivery of Messages—Penalty for Delay.—Code 1904, § 1294-h (6), which prescribes a penalty for delay in delivering a telegram, does not authorize imposition of the penalty for neglect to deliver within the state a telegram sent from a telegraph office within the state to an office just outside the state, though the company customarily delivered messages from the latter office to the adjoining town within the state in which the addressee resided.

[Ed. Note.—For other cases, see *Telegraphs and Telephones*, Cent. Dig. §§ 79-81; Dec. Dig. § 78.*]

Appeal from Corporation Court of Bristol.

Action by one Davis against the Western Union Telegraph Company. Judgment for plaintiff, and defendant appeals. Reversed and dismissed.

George H. Fearons, Donald T. Stant, and Phlegar, Powell, Price & Shelton, for appellant.

N. P. Oglesby and George M. Warren, for appellee.

WHITTLE, J. [1] This is an action under Va. Code, 1904, § 1294-h (6) to recover the penalty of \$100 prescribed for delay in delivery of a telegram.

The message was delivered to the company at 9:40 p. m. at

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

its office in Glade Spring, Va., addressed to J. L. Davis, care of Susong Building, Bristol, Tenn., and was received at that office at 9:46 p. m. of the same day, but was not delivered to the addressee, who lived in Bristol, Va., until 3:55 p. m. of the following day. The company maintained an office in Bristol, Tenn., but had no office of any kind in the adjoining city of Bristol, Va. It is true that, both by regulation and custom, the company's habit was to deliver messages from the Tennessee office to addressees in Bristol, Va., but, of course, no extraterritorial force can be imparted to the delivery statute by agreement of parties.

[2] Upon these undisputed facts, the sole question for our determination is whether or not the company can be penalized by authority of the Virginia statute for neglect of duty with respect to the delivery in this state of a message from its office in another state.

The case is readily distinguishable from *Western Union Telegraph Co. v. Reynolds*, 100 Va. 459, 41 S. E. 856, 93 Am. St. Rep. 971, *Western Union Tel. Co. v. Hughes*, 104 Va. 240, and *Western Union Tel. Co. v. White*, 113 Va. —, 74 S. E. 174. Those were all transmission cases under section 1294-h (5), where the duty rested upon the company promptly to transmit the messages from one Virginia office to another office in the same state; and for negligent failure to discharge that duty the company was subjected to the statutory penalty, though the line, in part, passed through the territory of another state. Those cases fall within the influence of decisions of the Supreme Court of the United States in *Western Union Telegraph Co. v. James*, 162 U. S. 650, 16 Sup. Ct. 934, 40 L. Ed. 1105, and *Western Union Telegraph Co. v. Commercial Milling Co.*, 218 U. S. 406, 31 Sup. Ct. 59, 54 L. Ed. 1088, 21 Ann. Cas. 815, 36 L. R. A. (N. S.) 220. The controlling principle of that line of cases is clearly stated in *Western Union Telegraph Co. v. White*, supra, 113 Va. —, 74 S. E. 174, as follows: "It is not sought in this case to give effect to our statute outside of the limits of this state, as was held could not be done in the *Chiles Case*, 214 U. S. 274, 29 Sup. Ct. 613, 53 L. Ed. 994; but the object of the suit is to give effect to the statute and to impose the penalty for the company's failure to transmit the message to Fredericksburg. If the message had never been transmitted at all from Staunton, it is clear, under the case of *Western Union Telegraph Co. v. Crovo*, 221 U. S. 364, 31 Sup. Ct. 399, 55 L. Ed. 498, the company would have been liable. If the point of delivery had been in Washington city, and the message had been duly transmitted to that place and never delivered, then there could be no recovery, as decided in the *Chiles Case*, supra.

If the message had been duly relayed and transmitted from Washington city to Fredericksburg, and the only default had occurred there in failing to deliver the message to the sendee, it is clear that an action would lie to recover the penalty under the decision in the James Case."

To uphold the recovery in this case would give to the Virginia statute an extraterritorial effect, to which it is not entitled. *Western Union Telegraph Co. v. Pendleton*, 122 U. S. 347, 7 Sup. Ct. 1126, 30 L. Ed. 1187; *Western Union Tel. Co. v. Chiles*, 214 U. S. 274, 29 Sup. Ct. 613, 53 L. Ed. 994.

For these reasons, the judgment must be reversed, and the case dismissed.

Reversed.

DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

PASCHALL & GRESHAM *v.* GILLISS.

June 13, 1912.

[75 S. E. 220.]

1. Brokers (§ 88*)—Commissions—Termination of Authority—Bad Faith—Question for Jury.—Where plaintiff was employed to sell certain timber land for \$200,000 on a commission of 5 per cent., and the land was subsequently sold to a purchaser whom plaintiff had procured for \$180,000, because the purchaser claimed plaintiff had misrepresented the amount of the timber on the land, plaintiff's bad faith, if any, was a question for the jury.

[Ed. Note.—For other cases, see *Brokers*, Cent. Dig. §§ 121, 123-130; Dec. Dig. § 88.* 2 Va.-W. Va, Enc. Dig. 642.]

2. Work and Labor (§ 29*)—Express Contract—Quantum Meruit.—Where plaintiff was employed to sell certain timber land for \$200,000 on a 5 per cent. commission, and the owners thereafter sold the land to a purchaser procured by plaintiff for \$180,000, the plaintiff's right of action to recover commissions was not limited to an action on the express contract; but he was entitled to sue on a quantum meruit

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